REMARKS

In the Office Action, the Examiner rejected claims 16-19, 21-32, 34 and 35. By the present Response, claims 16 and 28 have been amended. Accordingly, claims 16-19, 21-32, 34 and 35 remain pending in the present application. In light of the following remarks, reconsideration and allowance of all pending claims are respectfully requested.

Regarding the claims, the Examiner specifically rejected claims 16-19, 22-32, and 34-35 under 35 U.S.C. §103(a) as being unpatentable over Gat (US 5,954,663) in view of de la Huerga et al. (US 5,903,889). Applicants respectfully assert that the claims, as pending, are patentable over the cited references taken alone or in combination.

The burden of establishing a *prima facie* case of obviousness falls on the Examiner. *Ex parte Wolters and Kuypers*, 214 U.S.P.Q. 735 (PTO Bd. App. 1979). Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention absent some teaching or suggestion supporting the combination. *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984). Accordingly, to establish a *prima facie* case, the Examiner must not only show that the combination includes *all* of the claimed elements, but also a convincing line of reason as to why one of ordinary skill in the art would have found the claimed invention to have been obvious in light of the teachings of the references. *Ex parte Clapp*, 227 U.S.P.Q. 972 (B.P.A.I. 1985).

Claim 16 and its Dependent Claims

Beginning with amended independent claim 16, this claim recites, *inter alia*, "defining a general purpose network presentation including data representative of the fetal condition signal." This is but one of the features the cited references, taken alone or in combination, do not disclose. The de la Huerga et al. reference, at best, discloses a system related to the archiving of patient data. *See* de la Huerga et al., column 1, lines 5-14. At no point within the de la Huerga et al. reference is any semblance of a fetal

parameter or fetal condition signal ever disclosed. To assume that the de la Huerga et al. reference could relate to any semblance of a fetal parameter, yet alone a "general purpose network presentation including data representative of a fetal condition signal," would be to read into the reference elements that are not disclosed therein.

The additional reference, Gat, also does not suggest any semblance of "a general purpose network presentation including data representative of the fetal condition," as recited in the instant claim. There is no reason to believe that the system of Gat defines any semblance of a "general purpose network presentation." Rather, the Gat reference tends to suggest that the system disclosed therein requires a dedicated system. *See* Gat, column 7, lines 9-16. In other words, the physician would be required to use the specific terminal attached to the database to access the records therein. Applicants respectfully assert that to assume that the Gat reference teaches any semblance of a "general purpose network presentation" would be to read into the reference elements that are not disclosed therein.

Additionally, independent claim 16 recites, "updating the presentation to include updated data representative of the fetal condition," as well as, "retransmitting the presentation to the general purpose display station." These additional features are also not disclosed by the cited reference. As stated above, the de la Huerga et al. reference relates to the archiving of patient data. *See* de la Huerga et al., column 1, lines 5-14. Once the data is obtained, the de la Huerga et al. reference tends to suggest that such data is merely retrieved for viewing. *See id.*, column 7, lines 13-16. As such, there is no reason to believe that the cited reference discloses any semblance of a presentation that is updated or retransmitted. Again, to assume otherwise would be to read into the reference elements that are not disclosed therein.

As also outlined above, the additional reference, namely the Gat reference, does not satisfy the deficiencies of the de la Huerga et al. reference. The dedicated system of

Gat would not be comparable to general purpose display system as recited in the instant claim. Again, Applicants respectfully assert that to read into the reference such an element would be to attribute to the reference elements that are not disclosed therein.

In conjunction with the foregoing references, the Examiner, attempts to supplement his arguments and stated that, "in regard to real-time retransmission of data, it is well known to provide real-time update and retransmission of data page (sic) refreshing has been customary for quite some time to appraise the viewer of the most up-to-date data." *See* Paper 7, page 3.

Applicants, in accordance with M.P.E.P. § 2144.03, respectfully object to the Examiner's use of Official Notice. More specifically, Applicants object to the Examiner's assertion that certain elements are "well-known in the art." Moreover, Applicants respectfully assert that websites displaying up-to-the-moment scores that frequently refresh data, as exemplified by the Examiner on page 3 of the Office Action, would not lead the skilled artisan to the updating feature as recited in the instant claims. The Examiner's near supposition that automatically-dating websites would have lead one skilled in the art to update a presentation including data representative of a fetal condition simply will not do. In light of Applicant's objection to the Examiner's use of Official Notice, Applicants respectfully request the Examiner provide references to support his assertion as soon as possible during prosecution.

Lastly, Applicants respectfully note that the Examiner must read the claims as a whole, in light of the application as a whole. Claims are not be read in a vacuum, and limitations therein are to be interpreted in light of the specification in giving them their broadest *reasonable* interpretation. *See In re Okuzawa*, 537 F.D2d 545, 548 (CCPA 1976) (emphasis in original); *see also* M.P.E.P. § 2111.01. In other words, the Examiner must not parse out single words within a claim and interpret such term irrespective of the remainder of the application. With regards to the instant claims, Applicants respectfully

assert that the Examiner has interpreted many of the claim limitations without considering the remainder of the claim. For example, the mere fact that a reference may disclose a monitor for a fetal condition is not sufficient to show the same reference discloses a "general purpose network presentation including data representative of the fetal condition signal," as recited in the instant claim. Each term within a claim limitation has value, and, as such, Applicants respectfully assert that the Examiner must not selectively set aside claim language when formulating an appropriate rejection.

For the foregoing reasons, Applicants respectfully assert that independent claim 16 and its respective dependent claims 17-19, 21 and 22 are patentable over the cited reference combination. Reconsideration and allowance are respectfully requested.

Claim 23 and its Dependent Claims

Turning next to independent claim 23, this claim recites, *inter alia*, "updating the interface page to include the parameter data," as well as, "transmitting the updated interface page from the server to the client station for display." These are but some of the features recited by the instant claim that are not disclosed within the cited references. The cited references, taken alone or in combination, do not disclose updating an interface page as recited within the instant claim. The mere fact that a page displays data is not sufficient to support to assume that the reference discloses an "interface page" as recited in the instant claim, in light of the specification as a whole. With this in mind, Applicants respectfully assert that the display of data by Gat does not correspond to the "interface page" of the instant claim.

Regarding the sister reference of the combination, the de la Huerga et al. reference relates to the archiving of data. *See* de la Huerga et al., column 1, lines 5-14. As such, there is no reason to believe that the data within de la Huerga et al. is updated in any fashion whatsoever. To assume such would be to read into the reference elements that are not disclosed therein. Moreover, the Examiner's comments regarding what is "well-

known," as discussed and objected to above, tend to suggest that the cited references do not disclose all of the elements of the instant claim. Because the reference combination does not disclose all of the features of the pending claim, the claims are believed patentable.

For the foregoing reasons, Applicants respectfully assert that independent claim 23 and its respective dependent claims 24-27 are patentable over the cited references taken alone or in combination. Reconsideration and allowance are respectfully requested.

Claim 28 and its Dependent Claims

Turning lastly to amended independent claim 28, this claim recites, *inter alia*, "[a] means for transmitting the presentation to a general purpose display station," as well as, "[a] means for updating the presentation to include updated data representative of the fetal condition." As discussed above, neither the Gat reference nor the de la Huerga et al. reference discloses these features. There is no reason to believe that either of the references discloses the "updating" feature as recited within the instant claim. Again, to assume such would be to read into the reference elements that are not disclosed therein. Accordingly, Applicants respectfully assert that independent claim 28 and its respective dependent claims 29-32, 34 and 35 are patentable over the cited references taken alone or in combination. Reconsideration and allowance are respectfully requested.

No Suggestion or Motivation for Combining the References

Even assuming, *arguendo*, the Examiner is able to present a reference combination that discloses all of the features of a claim, the Examiner must still present a convincing line of reasoning as to why the skilled artisan would combine the references to reach the rejected claim. In other words, the artisan, viewing only the collective teachings of the references, must find it obvious to selectively to pick and choose various elements and/or concepts from the cited references to arrive at the claimed invention. *See Ex parte* Clapp, 227 U.S.P.Q. 972 (B.P.A.I. 1985). The Federal Circuit has warned that the

Examiner must not, "fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher." *See id.* When prior art references require a selected combination to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight gained from the invention itself, i.e., something in the prior art as a whole must suggest the desirability, and thus the obviousness, of making the combination. *Uniroyal Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 5 U.S.P.Q.2d 1434 (Fed. Cir. 1988). One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988).

With regards to the instant claims, Applicants respectfully submit that the Examiner has not provided a convincing line of reasoning to combine the two references and is, at best, using the instant application as a roadmap to reject the claims. First, the de la Huerga et al. reference relates to "providing a means of processing and converting *existing* data records . . . by which they may be accessed, controlled, and/or displayed through a single active display program." *See* de la Huerga et al., column 2, lines 65-68; column 3, lines 1-3 (emphasis added). Essentially, the de la Huerga et al. reference takes already established patient data records and plugs such records into a storage device, such as a CD ROM. *See id.*, column 4, lines 36-40. There is no reason to believe that the de la Huerga et al. reference could be compatible with any sense of a monitor as suggested by the Examiner. Rather, the entire essence of the de la Huerga et al. reference is the storage of data for a use at a later point in time, and, as such, teaches away from the instant claims. *See* de la Huerga et al., column 1, lines 20-22. Accordingly, the de la Huerga et al. reference would not be, by the skilled artisan, combined with any other reference which would possibly update, monitor, or detect a fetal condition to reach the instant claims. To do such, would be to attribute to the reference teachings that are not disclosed therein.

Secondly, the Gat reference does not present any intrinsic evidence as to why the skilled artisan would combine this reference with de la Huerga et al. to reach the instant claims. As stated numerous times above, the de la Huerga et al. reference discloses a dedicated system, in contrast to the teachings of the instant claims. There is no reason to believe, other than the hindsight provided by the instant application, that a skilled artisan would view the Gat and de la Huerga et al. references and, by those references alone, come up with the instant claims.

Prior to concluding, Applicants would like to respectfully reiterate that the claims must be interpreted in light of the application as a whole. Keeping this in mind, Applicants respectfully assert that the Examiner must not focus on select word, interpret such word independent of the application as a whole, and then reject the claim on basis that the cited art discloses this misinterpreted recitation. For example, the Examiner stated, within the Action, that, "De La Huerga (sic) specifically teaches the advantages of convention website storage of data presentation over central station arrangements such as that of Gat in the De La Huerga (sic) Background of the invention." *See* Paper 7, page 3. Even assuming the Examiner's interpretation is correct, this is not sufficient reasoning to combine the two references. Applicants respectfully assert that the instant claim recite more than "web-site" storeage as contended by the Examiner. To follow the Examiner's logic would be to ignore, for example, the "defining of a general purpose network presentation including data representative of the fetal condition signal," as recited in claim 16.

With this in mind, in conjunction with the foregoing arguments, Applicants respectfully assert that all of the pending claims are patentable over the cited references, taken alone or in combination. Reconsideration and allowance are respectfully requested.

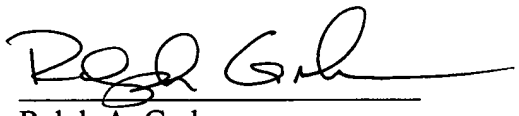
Conclusion

In view of the above remarks and amendments set forth above, Applicants respectfully request allowance of the pending claims. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Attached hereto is a marked-up version of the changes made to the claims by the current amendment. The attached page is captioned **"Version with markings to show changes made"**.

Date: 02/28/03

Respectfully submitted,



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VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS

Claim 16 and 28 have been amended as follows:

16. (Thrice Amended) A method for monitoring a fetal condition, the method comprising the steps of:

(a) detecting a fetal parameter of interest and generating a fetal condition signal representative thereof;

(b) storing the fetal condition signal;

(c) defining a general purpose network presentation including data representative of the fetal condition signal;

(d) transmitting the presentation to a general purpose display station via a configurable network link upon receipt of a command from the display station, wherein the display station includes a general purpose computer and a browser operating to display the network presentation; ~~and~~

(e) updating the presentation to include updated data representative of the fetal condition; and

(f) retransmitting the presentation to the general purpose display station.

28. (Twice Amended) A system for monitoring a fetal condition, the system comprising:

means for detecting a fetal parameter of interest and for generating a fetal condition signal representative thereof;

means for storing the fetal condition signal;

means for defining a general purpose network presentation including data representative of the fetal condition signal; ~~and~~

means for transmitting the presentation to a general purpose display station via a configurable network link upon receipt of a command from the display station, wherein the display station comprises a general purpose computer and a browser that operates to display the network presentation; and

means for updating the presentation to include updated data representative of the fetal condition.